

## 6.2. Delegations

Under the Local Government Act 1993 (the Act), Council must review all their delegations within 12 months of an election. Council may, by resolution, delegate to the General Manager or any other person or body (but not an employee of the Council other than the General Manager) any of the functions of the Council other than those referred to in section 377 of the Act.

This Mayoral Minute has been prepared in consultation with the Executive Manager Governance. This Mayoral Minutes considers the delegations to the General Manager and requests a further report to Council regarding delegations to the Mayor.

### Legislation

The Act contemplates councils delegating functions and decision making to the General Manager. These are those functions that are operational and administrative in nature rather than strategic.

There are some functions that a council is not able to delegate and these are prescribed in section 377 of the Act as follows:

*(1) A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council under this or any other Act, other than the following*

- (a) the appointment of a general manager,*
- (b) the making of a rate,*
- (c) a determination under [section 549](#) as to the levying of a rate,*
- (d) the making of a charge,*
- (e) the fixing of a fee,*
- (f) the borrowing of money,*
- (g) the voting of money for expenditure on its works, services or operations,*
- (h) the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment),*
- (i) the acceptance of tenders to provide services currently provided by members of staff of the council,*
- (j) the adoption of an operational plan under [section 405](#),*
- (k) the adoption of a financial statement included in an annual financial report,*
- (l) a decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6,*
- (m) the fixing of an amount or rate for the carrying out by the council of work on private land,*
- (n) the decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work,*
- (o) the review of a determination made by the council, and not by a delegate of the council, of an application for approval or an application that may be reviewed under section 82A of the [Environmental Planning and Assessment Act 1979](#),*

- (p) *the power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under [section 194](#),*
- (q) *a decision under [section 356](#) to contribute money or otherwise grant financial assistance to persons,*
- (r) *a decision under [section 234](#) to grant leave of absence to the holder of a civic office,*
- (s) *the making of an application, or the giving of a notice, to the Governor or Minister,*
- (t) *this power of delegation,*
- (u) *any function under this or any other Act that is expressly required to be exercised by resolution of the council.*

*(1A) Despite subsection (1), a council may delegate its functions relating to the granting of financial assistance if*

- (a) *the financial assistance is part of a specified program, and*
- (b) *the program is included in the council's draft operational plan for the year in which the financial assistance is proposed to be given, and*
- (c) *the program's proposed budget for that year does not exceed 5 per cent of the council's proposed income from the ordinary rates levied for that year, and*
- (d) *the program applies uniformly to all persons within the council's area or to a significant proportion of all the persons within the council's area.*

*(2) A council may, by resolution, sub-delegate to the general manager or any other person or body (not including another employee of the council) any function delegated to the council by the Departmental Chief Executive except as provided by the instrument of delegation to the council.*

*(3) A council may delegate functions to a joint organisation only with the approval, by resolution, of the board of the joint organisation*

A General Manager can only exercise and sub delegate to staff the powers and functions they have either in their own right (under legislation) or that have been delegated by Council (through a resolution or instrument of delegation).

Generally there are two approaches to council delegation:

1. Delegation by exception

The delegation is drafted in such a way that all the powers and authorities of the council that can be delegated are delegated by a council to the General Manager. The council then expressly excludes powers or functions from the delegation and the council then retains those powers. These retained powers are listed in the Instrument of Delegation.

The exceptions should not seek to unduly restrict the operational and management role of a general manager but instead make clear any decisions the council wishes to retain itself.

## 2. Individual delegations

The delegation is prescriptive and sets out the functions the general manager is authorised to perform.

This form of delegation is rare at a general manager level due to the significant number of identifiable functions delegable under the Act and other legislation applicable for local government. This form is more commonly used at the officer level where the general manager delegates functions to staff.

### **Delegation to General Manager**

The current North Sydney Council delegation to the General Manager is largely in the form of delegation by exception. There are some specified delegations which reference specific pieces of legislation and this is good practice. There are also some functions listed in the delegation on which there are either restrictions or specified requirements in the performance of the delegation.

However, there are some delegations which state the function and do not relate specifically to legislation nor do they include a restrictions on the function. In these instances it is recommended that the Instrument of Delegation be amended as follows:

1. Remove the reference regarding contracts (item 6). This provision replicates the requirements already present in the legislation. Removing this delegation will not alter the functions the General Manager is delegated to undertake nor will it alter the restrictions around that function.
2. Remove the reference to Minuting of Council Meetings (item 11). Removing this delegation will not alter the functions the General Manager is delegated to undertake nor will it alter the restrictions around that function.
3. Remove the reference to Business Papers (item 12). This is the role of the General Manager as set out in the Act. Removing this delegation will not alter the functions the General Manager is delegated to undertake nor will it alter the restrictions around that function.
4. Remove the reference to appointment of staff (Item 16). It is the General Manager who employs staff. This functions must be performed in accordance with the relevant Industrial instruments in force at any time. Removing this delegation will not alter the functions the General Manager is delegated to undertake nor will it alter the restrictions around that function.

5. Remove the reference to Staff- Award Band (item 17). It is the General Manager who employs staff. This functions must be performed in accordance with the relevant Industrial instruments in force at any time. Removing this delegation will not alter the functions the General Manager is delegated to undertake nor will it alter the restrictions around that function.
6. Remove the reference to Salary and Award Variations (item 18). It is the General Manager who employs staff. This function must be performed in accordance with the relevant Industrial instruments in force at any time. Removing this delegation will not alter the functions the General Manager is delegated to undertake nor will it alter the restrictions around that function.
7. Remove the reference to Staff Overtime (item 19). It is the General Manager who employs staff. This functions must be performed in accordance with the relevant Industrial instruments in force at any time. Removing this delegation will not alter the functions the General Manager is delegated to undertake nor will it alter the restrictions around that function.
8. Amend the provisions regarding attendance at conferences (item 20) to include provision to approve attendance at international conferences were the associated costs including travel are less than \$5,000.

Attached is a proposed Instrument of Delegation with the above changes shown in strikethrough.

### **Delegation to Mayor**

The delegation from Council to the Mayor is also to be reviewed and I propose that a report be provided to Council by staff for this purpose.

#### **I therefore recommend:**

**1.THAT** Council delegate to the General Manager any of the functions under the *Local Government Act 1993* or any other Act other than those provided in section 377(1) in accordance with the attached Instrument of Delegation.

**2.THAT** a report be provided to Council for the purpose of considering the Instrument of Delegation to the Mayor before December 2022 in order to meet Council's obligations under the Act.

**COUNCILLOR ZOË BAKER  
MAYOR**

**DELEGATION OF AUTHORITY – GENERAL MANAGER**

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**GENERAL MANAGER**

**1. Section 381 Local Government Act 1993**

To exercise all functions conferred or imposed on any Council employee under other Acts, in accordance with Section 381 of the Local Government Act 1993.

**2. Implementation of Adopted Program Budget**

To implement any work, service or action provided for in the adopted budget without further reference to Council except for:

- (a) the acceptance of tenders which are required under the Local Government Act 1993 to be invited by the Council, and
- (b) the determination of priorities where lump sum funding only has been provided.

**3. Protection of the Environment Operations Act 1997 – Section 187**

To exercise the powers and functions of an authorised officer under the Protection of the Environment Operations Act 1997.

**4. Procedures for the Acquisition of Land for Public Works**

To deal with all administrative and procedural matters relating to the acquisition of land which has been approved by Council including negotiations following the determination by Council of the price to be paid for acquiring the land, valuations, surveys and referrals to Solicitors.

**5. Legal Proceedings**

To commence, negotiate and settle legal proceedings.

**6. Contracts**

~~To enter into contracts other than those to which section 55 of the Local Government Act 1993 applies.~~

**7. Waive Hiring Fees**

To waive hiring fees where satisfied that circumstances warrant it.  
Note: Reason must be identified and documented.

**8. Writing Off Debts**

To authorise the writing off of debts to a maximum value of \$50,000.

**9. Major Developments - Public Meetings**

To call public meetings in respect of major proposals considered to be of a magnitude which would affect a particular part of, or the whole of the area so that residents, ratepayers and all interested parties are given an opportunity to fully discuss and express their views to Council before any decision is entered into.

**DELEGATION OF AUTHORITY – GENERAL MANAGER**

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**10. Correspondence**

To attend to all correspondence addressed to the Council (except correspondence addressed to the Mayor personally) in any of the following ways:

- (a) deal with it administratively
- (b) to refer it to a committee
- (c) to refer it direct to Council.

**11. ~~Minuting of Council Meetings~~**

~~To obtain any necessary services for the recording of minutes of Council meetings.~~

**12. ~~Business Papers~~**

~~To determine the composition and contents of the business paper for Council and all Committees.~~

**13. Traffic Committee and Council's Vote**

In the absence of the Mayor, to vote on behalf of Council on the North Sydney Traffic Committee on urgent traffic issues that arise in the December/January seasonal break.

**14. Destruction of Records – State Records Act**

To authorise the destruction of records in accordance with the adopted disposal schedule.

**15. Closing of Council Offices and Library**

To determine the closing of Council's offices and the library on Union/Award holidays.

**16. ~~Appointment of Employees~~**

~~To appoint employees of the Council for the purpose of the supervision and enforcement of all relevant Acts and Regulations.~~

**17. ~~Staff – Award Band~~**

~~To advance by way of one or more levels in any Band any member of staff or to transfer any member of staff from one Band to a higher Band.~~

**18. ~~Salary and Award Variations~~**

~~To approve variations including salary increases (within the adopted budget) in accordance with the Local Government Award and Council's salary administration policies (excluding "Senior Officers").~~

**19. ~~Staff Overtime~~**

~~To approve overtime for any member of staff as considered necessary.~~

**20. Attendance at Conferences**

**DELEGATION OF AUTHORITY – GENERAL MANAGER**

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To determine applications for staff attendance at conferences including conferences outside New South Wales but within Australia.

To approve staff attendance at international conferences where the associated costs including travel are up to \$5,000.

**21. Functions of Council under Chapter 15 of the Local Government Act 1993**

That pursuant to section 377 of the Local Government Act 1993, Council delegate to the General Manager the functions of Council under Chapter 15 of the Local Government Act 1993 other than those functions which, pursuant to sub-section (1) of that section, may not be delegated by the Council.

**22. Government Information (Public Access) Act 2009 – Internal Review**

To determine applications for Internal Review of GIPA determinations, in accordance with Part 5, Division 2, Section 84 — Conduct of Internal Review of the Government Information (Public Access) Act 2009.

**23. Companion Animals Act 1998– Section 89 (3)**

To access and deal with suppressed records in accordance with section 89(3) of the Companion Animals Act 1998.

**24. Penalty Infringement – Leniency**

Penalty Notice Review Panel

- a) To determine appeals for leniency on any penalty infringement notices issued by authorised officers of the Ranger & Parking Services Department in a sitting of the Penalty Notice Review Panel.
- b) To determine to withdraw from or proceed with proceedings before the Local Court for all Ranger Services non-traffic related matters in a sitting of the Penalty Notice Review Panel following assessment of prospects.

**25. Penalty Infringement – withdrawal**

To withdraw Penalty Infringement Notices where those notices are technically flawed.

**26. Resident Parking Permits Policy Exemption**

To determine submissions for exemption under the Resident Parking Permit Policy in a sitting of the Resident Parking Permit Review Panel.

**DELEGATION OF AUTHORITY – GENERAL MANAGER**

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**27. Staff attendance at International Conferences**

To approve staff attendance at international conferences where the associated costs including travel are up to \$5,000.

**28. North Sydney Independent Planning Panel (NSIPP)**

To refer development applications and section 96 applications made under the *Environmental Planning and Assessment Act 1979* for consideration and determination by the NSIPP.

**29. Council Chamber Seating**

To order the arrangement of seating in the Council Chamber **in consultation with the Mayor as Chair**, particularly the public gallery seating, to limit any potential risk and liability, and to enhance open government.

**30. Interim Heritage Order**

To make Interim Heritage Orders.

**31. Submissions to Government Agencies**

To make submissions on behalf of Council to Government Agencies.